

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID N. WILSON, a/k/a
DAVID N. WILLSON-BEY,

Plaintiff,

v.

Case No. 2:05-cv-106
HON. R. ALLAN EDGAR

TIM BUSCHELL, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on June 22, 2006. The Report and Recommendation was duly served on the parties. The Court has received objections from defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Defendants' arguments regarding exhaustion are without merit in light of the Supreme Court's recent decision in *Jones v. Bock*, 2007 WL 135890 (U.S., Jan. 22, 2007). Defendants' objections regarding plaintiff's equal protection and retaliation claims are without merit as plaintiff's claims raise disputed factual issues and genuine issues of material fact which cannot be resolved on summary judgment. Finally, for the reasons stated in the Report and Recommendation, defendants are not entitled to qualified immunity.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #42) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that defendants' motion for summary judgment (Docket #17) is GRANTED IN PART AND DENIED IN PART. The motion is granted as to plaintiff's procedural and substantive due process claims and any claims which involve the allegedly "false" misconduct written by defendant Hodges. The motion is denied as to plaintiff's equal protection and retaliation claims.

Dated: 4/5/07

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE